

DAVID LANKFORD)	
Plaintiff;)	CIVIL ACTION NO.:
)	<hr/>
v.)	
)	
FOUNDATION ONE, BENEFIT)	
PLANNERS, & VALLEY SERVICES)	
Defendants.)	

On or about January 13, 2005, Plaintiff David Lankford (“Plaintiff”) filed this action against Defendants Valley, Foundation One, and Benefits Planners in the Circuit Court of Etowah County, Alabama entitled “David Lankford v. Foundation One, Benefit Planners, and Valley Services,” No. CV-2005-78-WWC, which court is within the jurisdiction of the United States District Court for the Northern District of Alabama, with venue proper in the Middle Division. On or about January 26, 2005, Plaintiff served Valley with the copy of the Complaint. A copy of the Complaint (the “Complaint”) is attached hereto as Exhibit "A." A certified copy of all state court pleadings will be requested by counsel for Valley and filed with this court when received.

2.

This action is for health benefits, interest, severe mental distress and punitive damages, for the alleged failure to provide Plaintiff with health benefits under an employee benefit plan. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(a), in that it involves a federal question arising under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* ("ERISA"), a law of the United States. Consequently, this action is removable to this Court pursuant to 28 U.S.C. § 1441.

3.

ERISA comprehensively regulates all employee benefit plans. See ERISA §§3(1), 3(3), and 4(a); 29 U.S.C. §§1002(1), 1002(3), 1003(a). ERISA is so comprehensive in its regulation of employee benefit plans that it preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." See ERISA §514(a), 29 U.S.C. §1144(a). Employee benefit plan participants, such as Plaintiff, may sue under ERISA to recover benefits or to enforce their rights under the plan. See ERISA §502(a)(1)(B); 29 U.S.C. §1132(a)(1)(B).

4.

ERISA's civil enforcement provisions, however, were intended to be the exclusive remedies available to persons asserting claims relating to employee benefit plans and displace all state causes of action. See Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987). Even if a plaintiff's claims are pled solely under state law, the action is nevertheless removable to federal court since any claim related to an employee benefit plan is necessarily federal in character and all such claims pled under state law are preempted. Metropolitan Life Ins. Co. v. Taylor, 481

U.S. 58, 63-64 (1987). Accordingly, Plaintiff's exclusive cause of action, if any, arises solely under ERISA, 29 U.S.C. §1001, et seq., and this Court has federal question jurisdiction.

5.

This Notice of Removal is timely because it is filed within thirty (30) days after the receipt by Defendant Valley of a copy of the Complaint.

6.

Defendants American Fidelity Assurance Company, incorrectly referred to as Foundation One,¹ and Benefit Planners consent to this removal and will file a separate Consent to Removal.

7.

Pursuant to 28 U.S.C. § 1446(d), Defendant has caused a copy of this Notice of Removal to be filed with the Clerk of the Circuit Court of Etowah County, Alabama.

WHEREFORE, PREMISES CONSIDERED, Defendant Valley Services, Inc. prays removal of this action from the Circuit Court of Etowah County, Alabama to the United States District Court for the Northern District of Alabama, Middle Division.

Dated this 17th day of February, 2005.

ONE OF THE COUNSEL FOR DEFENDANT,
Valley Services, Inc.

Jonathan S. Harbuck (AL# ASB-0906-U70J)
Elizabeth P. Odom (AL# ASB-8215-L64O)
THE KULLMAN FIRM

¹ American Fidelity Assurance Company will formally make this correction when it responds to Plaintiff's Complaint.

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 17th day of February, 2005, caused a copy of the above and foregoing to be served by United States Mail, postage prepaid, upon the following:

Myron Allenstein
Rose Marie Allenstein
Allenstein & Allenstein, LLC
141 South 9th Street
Gadsden, AL 35902-0487
